

**AGREEMENT  
BETWEEN  
COUNTY OF SANTA CLARA AND CITY OF MILPITAS  
FOR  
THE SHARING OF DESIGN AND CONSTRUCTION COSTS  
RELATING TO  
THE COUNTY OF SANTA CLARA  
TRAFFIC OPERATIONS SYSTEM ON MONTAGUE EXPRESSWAY  
BETWEEN  
CAPITOL AVENUE/GREAT MALL PARKWAY & I-680**

This AGREEMENT is made and entered into as of the date it is fully executed between the City of Milpitas, a municipal corporation of the State of California (hereinafter "CITY"), and the County of Santa Clara, a political subdivision of the State of California (hereinafter "COUNTY"), collectively referred to herein as "PARTIES."

**WHEREAS**, the Traffic Operations System (hereinafter "TOS") is funded by the sales tax enacted by voters approved in the 1996 Measure A/B ballot measure for the purpose of improving traffic operations and management on COUNTY's expressways;

**WHEREAS**, the COUNTY Roads & Airports Department (hereinafter "DEPARTMENT") administers the design and construction of the TOS, and will operate and maintain the TOS upon completion of its construction;

**WHEREAS**, the TOS improvements consist of underground conduit, pull boxes, fiber-optic cable, system detector loops, closed circuit television (CCTV) cameras, video and communication equipment and hubs installed on COUNTY's expressways and at the COUNTY's Traffic Operations Center located at 1505 Schallenberger Road in San Jose, California;

**WHEREAS**, a funding agreement entitled "Agreement Among the City of San Jose, City of Milpitas and the County of Santa Clara for the Improvement of Montague Expressway from De La Cruz Boulevard to Highway 680 and the Intersection of Abel Street and Calaveras Boulevard" was executed on December 16, 2003 between COUNTY, CITY and City of San Jose for the use of 3 Com Corporation in-lieu fees by CITY and COUNTY to mitigate traffic impacts on Montague Expressway and other areas, resulting from the 3 Com development;

**WHEREAS**, CITY received from the City of San Jose a one-time maximum amount to \$1,568,000 from the 3 Com Corporation in-lieu fees as set forth in the funding agreement referred hereinabove to provide traffic mitigation on Montague Expressway between Capitol Ave/Great Mall Parkway and Interstate I-680;

**WHEREAS**, COUNTY plans to install a fiber-optic cable trunk line extension with CCTV cameras, video and communication equipment, and system detector loops on Montague Expressway from Capitol Avenue/Great Mall Parkway to Interstate I-680; all of which improvements shall be referred to as "PROJECT";

**NOW, THEREFORE**, in the mutual best interest of orderly and economic construction practices, and, for and in consideration of their mutual promises, covenants and agreements, and subject to the terms, conditions and provisions hereinafter set forth, COUNTY and CITY do hereby agree as follows:

1. **Sharing of Costs:** CITY agrees to fund a not-to-exceed sum of \$354,500 (consisting of \$16,000 for the engineering cost, \$10,500 for railroad crossing permit fees and \$328,000 for the construction cost) of the 3 Com Corporation in-lieu fees received from the City of San Jose to pay for the design and construction of the TOS improvements along Montague Expressway between Capitol Ave/Great Mall Parkway and Interstate I-680. Upon execution of this Agreement and receipt of COUNTY's billing, CITY shall transfer the said not-to-exceed sum to COUNTY.
2. **Records Retention and Audit:** COUNTY shall retain all records related to the PROJECT for three years after its completion. During this period, COUNTY shall make these records available within a reasonable time to CITY upon request. CITY reserves the right to audit the expenses incurred in performance of this Agreement.
3. **Design Administration:** COUNTY shall develop or cause to be developed plans, specifications and a construction cost estimate for the PROJECT.
4. **Right-of-Way and Environmental Clearances:** COUNTY has conducted an environmental study and a Mitigated Negative Declaration for the TOS/Signal Synchronization Program was adopted by the COUNTY's Board of Supervisors on March 19, 2002. No additional right-of-way shall be required for the PROJECT.
5. **Construction Administration and Inspection:** COUNTY shall diligently advertise the PROJECT for construction bids, award, and administer the construction contract in accordance with all applicable public works construction contract laws through the completion of PROJECT construction.
6. **Operations & Maintenance:** Upon completion and final acceptance of PROJECT construction, COUNTY shall continue operating and maintaining the roadway, signal and TOS improvements within the dedicated expressway right-of-way.
7. **Insurance and Indemnification:** COUNTY shall require its contractor(s) to defend and indemnify CITY, its officers, agents and employees for all damages and injuries, including costs and attorneys, that may result from contractor's performance of the construction contract and all other negligence and willful misconduct, and to name CITY as additional insured on all applicable insurance coverages required by COUNTY of its contractor(s) for the said PROJECT.
8. **Hold Harmless:** In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a PARTY shall not be shared pro rata but, instead, COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other PARTIES, their officers,

board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such PARTY under this AGREEMENT. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officer, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other PARTIES under this AGREEMENT.

9. **Severability:** Should any part of this AGREEMENT be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect; provided that the remainder of the AGREEMENT, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.
10. **Non Waiver:** A failure by either PARTY to require full compliance with any requirement or condition of this AGREEMENT shall not be deemed to be waiver of that requirement or condition or of any subsequent breach of the same or any other requirement or condition. Acceptance of performance or fulfillment of a requirement or a condition by the other PARTY, including payment to either PARTY, shall not be deemed to be a waiver of any preceding breach, regardless of knowledge or such preceding breach at the time of acceptance.
11. **Nondiscrimination:** COUNTY and CITY shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning non-discrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); and California Labor Code Sections 1101 and 1102. COUNTY and CITY shall not discriminate against any employee or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall COUNTY and CITY discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
12. **Prevailing Wages:** COUNTY shall pay, or cause to be paid, prevailing wages, as required by Labor Code Section 1770 et. seq., for any labor performed by its construction contractor(s) for the PROJECT described in this AGREEMENT.
13. **Termination:** The terms of this AGREEMENT shall commence upon execution of the Agreement by all PARTIES and shall remain in effect until terminated by mutual agreement of

the PARTIES. If not previously terminated, the AGREEMENT shall expire on December 16, 2008, unless extended otherwise by both PARTIES by written amendments to the AGREEMENT. If the PROJECT construction contract has not been awarded by the said AGREEMENT expiration date, COUNTY shall reimburse CITY the fund balance not expended for design, permit and construction.

14. **Notices:** Notices required by the terms of this AGREEMENT may be delivered to the appropriate parties at the following addresses:

COUNTY:  
Mr. Michael J. Murdter, Director  
County Santa Clara  
Roads & Airports Department  
101 Skyport Dr.  
San Jose, CA 95110-1302  
Attn: Tong Hong, Senior Civil Engineer

CITY:  
Mr. Gregory Armendariz, City Engineer  
City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035  
Attn: Julie Waldron, Assistant Civil Engineer

**WITNESS THE EXECUTION HEREOF** on the day and year set forth below.

CITY OF MILPITAS, a municipal corporation

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney Date

By: \_\_\_\_\_  
Gregory Armendariz Date  
City Engineer as to Content

ATTESTED

By: \_\_\_\_\_  
Date  
City Clerk

By: \_\_\_\_\_  
Date  
City Manager

APPROVED AS TO FORM AND LEGALITY

COUNTY OF SANTA CLARA, a political  
subdivision of the State of California

By: \_\_\_\_\_  
Leslie Orta Date  
Deputy County Counsel

By: \_\_\_\_\_  
Michael J. Murdter Date  
Director of Roads & Airports